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May 14, 2021

VIA ECF

The Honorable Vernon S. Broderick
United States District Court for the Southern District of New York
40 Foley Square
New York, NY 10007
Email: BroderickNYSDChambers@nysd.uscourts.gov

APPLICATION GRANTED
SO ORDERED 
VERNON S. BRODERICK
U.S.D.J. 5/17/2021

Re: *Vale S.A. v. BSG Resources Limited*, No. 19-cv-3619 (VSB)

Dear Judge Broderick:

In accordance with Rules 5(B)(ii) and 5(B)(iii) of Your Honor's Individual Rules & Practices in Civil Cases, Petitioner Vale S.A. ("Vale") submits this letter motion seeking permission to file certain documents under seal. Vale respectfully requests to redact the highlighted portions of, and file under seal, Vale's Memorandum of Law in Support of Motion to Compel Compliance with the Discovery Requests Served on Benjamin (Beny) Steinmetz As Alter Ego of BSGR ("Memorandum of Law") and the Declaration of Lisa Vicens in Support of Vale's Motion to Compel Compliance with the Discovery Requests Served on Benjamin (Beny) Steinmetz As Alter Ego of BSGR ("Vicens Declaration") and Exhibits A through D ("Exhibits").

The Memorandum of Law, Vicens Declaration and Exhibits rely upon and cite to documents and information that contain potentially sensitive or personal information or have been designated as confidential by the parties who produced them to Vale in separate proceedings. In ruling on a motion to seal, the Court must balance countervailing interests which include the right of public access to judicial documents and the privacy interest of the party resisting disclosure. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119-20 (2d Cir. 2006). Courts frequently find that a company's interest in protecting proprietary or sensitive information outweighs the public's interest in accessing such materials, and, as such, permit parties to file such materials under seal. See, e.g., Lexington Furniture Industries, Inc. v. Lexington Co., 19-cv-6239 (PKC), 2021 WL 1143694, at *2 (S.D.N.Y. Mar. 24, 2021) ("The

demonstration of a valid need to protect the confidentiality of such sensitive business information may be a legitimate basis to rebut the public's presumption of access to judicial documents”); Alexander Interactive, Inc. v. Adorama, Inc., 12 Civ. 6608 (PKC)(JCF), 2014 WL 4346174, at *2 (S.D.N.Y. Sept. 2, 2014) (allowing documents containing confidential information concerning the business relationship between defendant and a non-party entity to be filed under seal); Gosmile, Inc. v. Dr. Jonathan Levine, D.M.D. P.C., 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal documents containing “highly proprietary material concerning the defendants’ marketing strategies, product development, costs and budgeting”).

Moreover, to facilitate the provision of confidential materials between Vale and certain respondents in In re Application of Vale S.A., Vale Holdings B.V., and Vale International S.A. for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings, 1:20-MC-00199-JGK-OTW (S.D.N.Y.), the parties entered into a protective order, which was filed and so-ordered by the Honorable Ona T. Wang of the Southern District of New York on October 7, 2020, ECF No. 69. The parties met and conferred and agreed that Vale could use the documents in connection with its Motion, provided that these documents are filed under seal and continue to be afforded confidential treatment. Pursuant to Rule 5(B)(iii)(a) of Your Honor’s Individual Rules & Practices in Civil Cases, Vale has provided the respondents who requested that these documents be filed under seal with the required notice and they have indicated that they intend to make the necessary submission to support their confidentiality.

For the foregoing reasons, Vale respectfully requests that the Court permit Vale to file the above-referenced Exhibits under seal.

Thank you for Your Honor’s consideration.

Respectfully submitted,

/s/ Jeffrey A. Rosenthal

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